

FEBRUARY 1, 1955



1026 17th STREET, N. W., WASHINGTON 6, D. C.

## TYRANNY OR LAW?

**F**EW of us today who are in contact with reality, as the psychologists would say, fear an encounter with an Alice in Wonderland queen who shouts "Off with his head!" Nevertheless, this character symbolizes the tyranny of those days in history when dozens of real kings and queens ordered heads and ears and noses off on mere whim, without any kind of trial or any chance for the victim to prove his innocence.

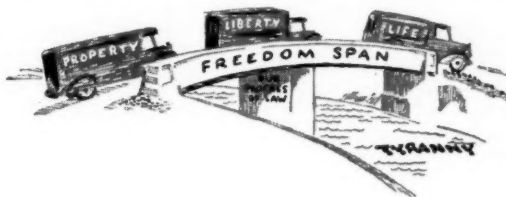
Fortunately for us, our English forefathers gradually evolved a safeguard against arbitrary power—the idea of "due process of law."

As Daniel Webster defined it in the famous Dartmouth College case: "Due process of law is that law which *hears* before it condemns, which proceeds upon *inquiry*, and renders judgment only *after trial*. Its meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

### More Than Seven Centuries Ago

Due process had its origins in the action of the English barons who in 1215 secured the Magna Charta, which guaranteed in writing that all the king's actions affecting private rights would be according to the law of the land. The idea of rule of law, as it came to be known in England, flourished in eighteenth century America and had great influence on the colonial pamphleteers. For example, the argument that taxation without representation is tyranny was simply an application of the basic idea of due process.

Due process was written into our Constitution in the 5th and later in the 14th amendments. It supplements



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a long list of specific guarantees of fair court procedures which appear in four of the ten amendments in the Bill of Rights. Its application in this country, as in England, was originally against the arbitrary administrator or judge. However, since the latter part of the nineteenth century the courts have evolved substantive (in contrast to procedural) due process as a curb on legislators. Due process now requires not only that proper procedure be followed but that the law itself be reasonable.

Today due process in this country operates as a safeguard of individual rights against governmental authority at all

levels (federal, state and local) and thus has an important role in support of individual liberties. Despite its great significance, it has never been fully and conclusively defined. Rather, it has gradually evolved as our courts have determined, in many different cases, what *is*, and what *is not* due process. This elasticity has given rise to a tremendous amount of litigation and judicial decisions, especially with regard to the police (public health, safety, morals, and general welfare) power of the states.

The guarantees of due process probably seem more remote than any other guarantees in the Bill of Rights. It is easy to imagine how distasteful it would be not to have free speech, but imagine for a moment that you did not have recourse to the usual protections of due process!

*Out of the clear blue, you receive a notice from a state across the country that in two days you will stand trial for a crime (no further explanation). Fearful of not having a chance to be heard, you hop a plane and arrive just before the trial. Having spent all your money for the plane ticket, you can't afford a lawyer. Nor is there any time to prepare a defense (which seems rather fruitless since you don't really know what offense you're being charged with).*

*Under these unhappy circumstances the trial begins. Outwardly everything conforms to a fair trial. You soon find out that you've been accused of "possession of liquor" (this is a state where prohibition exists). Counsel is suddenly produced for you. Even a jury is provided. Your counsel soon whispers to you that you really haven't a chance because the judge gets an additional fee for each conviction, and the natives of this community who comprise the jury are very suspicious of outsiders. Also you are not given the opportunity to confront your accuser, nor are you even told who he is.*

*The trial lasts three-quarters of an hour, the jury deliberates your fate in less than five minutes. So, it's no*

*(Continued on page 2)*

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The budget isn't big enough—we mean the League budget is too small to give you a larger VOTER. The budgetary procedures article you're looking for in the VOTER will appear soon in "Report from the Hill." It sells for a small part of your personal budget (5¢); ask your Publications Chairman for it.

## ★ CONGRESSIONAL SPOTLIGHT ★

**TRADE:** Hearings on **H.R. 1**, to extend the Trade Agreements Act for three years, authorize the President to lower some tariffs and make other concessions, began Jan. 17 before the House Ways and Means Committee. **H.R. 536** (Kean, R., N.J.) is an identical bill. (See **NATIONAL VOTER** 1/15/55).

**H.R. 229** (Williams, D., N.J.) and **H.R. 2386** (Eberharter, D., Pa.) would create an Adjustment Assistance Board to provide assistance to workers, companies and communities, at the President's request, if his refusal to accept the Tariff Commission's recommendations under the escape clause might be expected to affect them adversely. Referred to House Ways and Means Committee.

**CODES OF PROCEDURE FOR COMMITTEE HEARINGS:** **S. Res. 15** (Hennings, D., Mo.) and **S. Res. 22** (Bush, R., Conn.) propose safeguards for witnesses before congressional committees. **S. Res. 15** also provides for Senate enforcement of the code. **S. Res. 12** (Watkins, R., Utah, and others) rules out one-member hearings unless committee or witness waives objection. **S. Res. 17** (Jenner, R., Ind.) proposes minimum procedures for conduct of committee hearings. All resolutions referred to Senate Rules Committee.

**CONSTITUTIONAL AMENDMENT: S. J. Res. 1** (Bricker, R., Ohio) proposes limiting the President's treaty-making power as defined in the Constitution. Referred to Senate Judiciary Committee. Ten similar proposals have been introduced in the House and referred to the Judiciary Committee.

**D. C. HOME RULE: S. 669** (Neely, D., W. Va., and 33 others) proposes an elected mayor and nine-member council and an elected school board for the District of Columbia. Referred to Senate District of Columbia Committee.

### WANT OFFICIAL LISTS OF CONGRESSIONAL COMMITTEES?

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### TYRANNY OR LAW?—Continued

*surprise when the judge pronounces the sentence and you are severely fined and given a prison term.*

This make-believe situation is a composite of actual cases which were appealed to higher courts to determine whether the accused had been denied due process. It illustrates some of the protections which the courts have determined fall under due process, as (1) the government must have *jurisdiction* over the accused person; (2) the accused must be notified of time and place of trial and nature of charges; and (3) the accused must have an opportunity to be heard and to be tried before an impartial court (for example, the judge should have no financial interests in the case). Another important qualification of due process is that there be more than mere outward compliance to fair trial guarantees. Actually, the specific forms of a fair trial are not as important as that the procedure suit the nature of the case and be sanctioned by established custom.

We chose for our example a criminal proceeding although due process also applies to administrative proceedings. Federal procedures were very loosely defined until the Administrative Procedures Act was passed in 1946. This Act requires ample notice and hearings, especially by the government's regulative agencies.

You might ask: Isn't due process safely imbedded in the Bill of Rights? Is it not the job of the courts in each instance to see that an individual's right to due process is

protected? Why should I be concerned about such matters?

First of all, due process of law is much more than a mere legal-sounding term. In its broadest meaning, it implies an essential and fundamental fairness which should guide our daily relations with our fellow men.

Secondly, today's national security calls for further development of due process. For example, due process can serve as a yardstick for considering two current problems: congressional investigations and the federal loyalty-security program.

Thirdly, through widespread thinking about applications of due process which will help safeguard individual liberties, citizens can influence its development, just as they did when the common law was evolving.

As Judge Curtis Bok said: "Custom should be the evolution of the law. . . . Custom is more efficient than law because it patrols itself."

## Freedom Agenda Conferences

**R**EGIONAL training conferences for state and local community leaders of Freedom Agenda Projects will be held in February, March and April in 14 major cities. The conferences have been made possible by a renewed grant from the Fund for the Republic to the Carrie Chapman Catt Memorial Fund to assist local communities in organizing discussion groups and other programs on individual liberty.

At least 40 national organizations, including the League of Women Voters, are cooperating in the Freedom Agenda Program. Many independent local groups are working with local affiliates of the national organizations. Projects are already under way in over 300 local communities in 46 states and Alaska.

The conferences are directed primarily toward helping those who are engaged in the Projects. The meetings will include demonstrations on techniques for organizing Freedom Agenda Projects and for conducting discussions; they will also afford participants an opportunity to exchange ideas and experiences which have resulted from the Projects already existing, and to discuss the origins and present status of liberty under law.

First of the two-day conferences will be held in Milwaukee, Feb. 23-24. Others will be held in Los Angeles, Feb. 28-March 1; San Francisco, March 3-4; Portland (Ore.), March 7-8; Birmingham (Ala.), Feb. 28-March 1; Jacksonville (Fla.), March 3-4; Washington (D.C.), March 7-8; Tulsa, Feb. 28-March 1; St. Louis, Feb. 28-March 1; Cleveland, March 3-4; New York City, March 14-15; Boston, March 17-18; Indianapolis, March 15-16; and Denver, April 11-12.

On behalf of the League of Women Voters of the United States, Mrs. Oscar M. Ruebhausen, member of the national Board, testified on January 20 before the House Ways and Means Committee in support of renewal of the Trade Agreements Act. The 1600-word testimony incorporated many of the ideas set forth in the article on trade in the January 1 **VOTER**; it also mentioned the League's trade surveys. Copies are available at 5¢ each.

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